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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,863	10/21/2003	John V. R. Krummell JR.	54007.8013.US00	6930

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EXAMINER
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NEWTON, JARED W

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 12/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/690,863	Applicant(s) KRUMMELL ET AL.	
	Examiner Jared W. Newton	Art Unit 3634	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 October 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/29/04</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This second non-final office action is in response to the amendment filed October 21, 2005, by which claims 1, 8-12, 14, and 17 were amended, and claim 20 was added.

#### ***Information Disclosure Statement***

Upon further review of the application file, examiner has noticed that the US-6,129,223 reference to Krummell cited on the PTO-1449 form dated January 29, 2004 was duplicated on the PTO-892 form dated July 25, 2005. A reference can only be cited in one of the above forms; therefore, a corrected PTO-1449 form has been submitted herewith by the examiner.

#### ***Drawings***

The drawings were received on October 21, 2005. These drawings are in compliance with the requirements set forth in the original Office Action.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 9-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the recitations, "predetermined pallet length" in lines 9 and 10 of claim 9, lines 2 and 3 of claim 10, and line 3 of claim 11

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render the claims indefinite. A pallet of predetermined length is not an element of the claimed invention based on the recitation, "adapted to support a pallet having a predetermined length" on lines 3 and 4 of claim 9. It is improper to seek to define claimed structure based on a comparison to some unclaimed element. In this case, the metes and bounds of the claim cannot be properly ascertained because one would not know whether their device infringed the instant claim until someone else later added a pallet of predetermined length. Accordingly, the features of the device itself must be defined instead of relying upon a comparison with an unclaimed element.

Claims 9-11, and 13 are rejected under the second paragraph of 35 U.S.C. 112 as indefinitely claiming the subject matter that the applicant regards as his invention.

*In regard to the claims*, the positive recitations below render the above claims indefinite:

- "30% to 45% of the predetermined pallet length" on lines 9 and 10 of claim 9;
- "155% to 175% of the predetermined pallet length" on lines 2 and 3 of claim 10;
- "90% to 100% of the predetermined pallet length" on lines 2 and 3 of claim 11;
- And, "predetermined pallet length is 46 to 50 inches" on line 2 of claim 13.

In particular, applicant functionally sets forth the pallet in line 3 of claim 9 through the recitation "adapted to support a pallet having predetermined length" and then applicant improperly seeks to link the functionally recited structure of the pallet to the

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positive structures of the side rails and support rails. Thus, the metes and bounds of the claims referring to said side rails and support rails cannot be properly ascertained since one would not know whether the pallet is being positively claimed.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5, 9, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,773,546 to Konstant.

In regard to claim 1, Konstant discloses a pallet rack assembly comprising: a pair of spaced apart support rails 12 having front and back ends (said back ends disposed on the right-hand side of Figure 2); a first cart 36 including a first pair of spaced apart side rails, each side rail including a first wheel 38 disposed adjacent to a front end of the side rail (shown as the left-hand end in Figure 1), and a second wheel 38 located between a back end and a midpoint of the side rail (see FIG. 1); wherein the second wheels 38 are rollable along the support rails 12 up to a position adjacent to the end of the support rails 12, such that the back ends of the side rails (between which beam 35 is connected as shown in Figure 1) extend beyond the back ends of the support rails 12 when the second wheels 38 are adjacent to the back ends of the support rails 12 (see FIG. 1).

In regard to claim 2, Konstant further discloses a second cart 32 comprising a second pair of spaced apart side rails each including a pair of wheels 34 rollable along said support rails.

In regard to claim 9, *inasmuch as the claims are understood in view of the 112 rejections set forth above*, Konstant discloses the assembly as set forth above comprising the support rails 12; a cart 36 with side rails adapted to support a pallet, each side rail including a first wheel 38 located adjacent to a first end of the rail, and a second wheel 38 located between a second end and a midpoint of the side rail (see FIGS. 1 and 2).

In regard to claims 5 and 14, the first wheels 38 on the first cart are rollable along said support rails 12 up to a front end (shown as the left-hand end adjacent to reference character 14 in Figure 2) of the support rails (see FIGS. 1 and 2).

Claims 1, 2, 5, 6, 7, 9, and 14-18 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,773,546 to Konstant.

In regard to claim 1, Konstant discloses a pallet rack assembly comprising: a pair of spaced apart support rails 12 having front and back ends (said back ends disposed on the right-hand side of Figure 2); a first cart 36 including a first pair of spaced apart side rails, each side rail including a first wheel 38 disposed adjacent to a front end of the side rail (shown as the left-hand end in Figure 1), and a second wheel 38 located between a back end and a midpoint of the side rail, wherein the midpoint is defined at a position halfway between the upper and lower surfaces of said side rail, disposed

immediately above the leftmost portion of said second wheel as viewed in Figure 2; wherein the second wheels 38 are rollable along the support rails 12 up to a position adjacent to the end of the support rails 12, such that the back ends of the side rails (between which beam 35 is connected as shown in Figure 1) extend beyond the back ends of the support rails 12 when the second wheels 38 are adjacent to the back ends of the support rails 12 (see FIG. 1).

In regard to claim 2, Konstant further discloses a second cart 32 comprising a second pair of spaced apart side rails each including a pair of wheels 34 rollable along said support rails.

In regard to claim 9, *inasmuch as the claims are understood in view of the 112 rejections set forth above*, Konstant discloses the assembly as set forth above comprising the support rails 12; a cart 36 with side rails adapted to support a pallet, each side rail including a first wheel 38 located adjacent to a first end of the rail, and a second wheel 38 located between a second end and a midpoint of the side rail, wherein the midpoint is defined at a position halfway between the upper and lower surfaces of said side rail, disposed immediately above the leftmost portion of said second wheel as viewed in Figure 2 (see FIGS. 1 and 2).

In regard to claims 5 and 14, the first wheels 38 on the first cart are rollable along said support rails 12 up to a front end (shown as the left-hand end adjacent to reference character 14 in Figure 2) of the support rails (see FIGS. 1 and 2).

In regard to claims 6 and 15, Konstant discloses a pallet rack assembly comprising the limitations of claims 1 and 9, said rack further comprising each of said

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second wheels located closer to the midpoint of the side rail to which it is attached than to the back end of the side rail, wherein the midpoint is defined at a position halfway between the upper and lower surfaces of said side rail, disposed immediately above the leftmost portion of said second wheel as viewed in Figure 2.

In regard to claims 7 and 16, Konstant discloses a pallet rack assembly comprising the limitations of claims 6 and 15, said rack further comprising each of said second wheels located at a position 80% to 90% of a distance measured from the back end of the side rail to the midpoint of the side rail, wherein the midpoint is defined at a position halfway between the upper and lower surfaces of said side rail, disposed immediately above the leftmost portion of said second wheel as viewed in Figure 2.

In regard to claim 17, Konstant discloses a pallet rack comprising a pair of spaced apart support rails 12; a cart 36 including a pair of spaced apart side rails, each side rail including a first wheel 38 adjacent to a first end of the side rail, and a second wheel 38 between a second end (said second end disposed on the right-hand side of Figure 2) of the side rail and a midpoint of the side rail wherein the midpoint of said side rail is located at a position halfway between the upper and lower surfaces of said side rail, disposed immediately above the leftmost portion of said second wheel (see FIG. 2), so that the second wheel is located at a distance from 55% to 90% of the distance from the second end of the side rail to the midpoint of the side rail.

In regard to claim 18, Konstant further shows said second ends of said side rails disposed to extend beyond the second ends of said support rails when said second wheels are rolled up against the second ends of said support rails (see FIG. 2).



***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8, 10, 11, 13, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over '546 to Konstant as applied to claims 1, 2, 5, 6, 7, 9, and 14-18 above, alone.

In regard to claims 8, 19, and 20, Konstant discloses a pallet rack comprising the limitations of claims 1 and 17 as set forth above, but does not disclose said side rails extending a specific length beyond the back ends of the support rails when the second wheels are rolled up against the back ends of the support rails. It would have been obvious to one of ordinary skill in the art at the time of the invention to construct the side rails of the first cart as disclosed by Konstant so that any desired length, such as a percentage of the rails total length or a predetermined length, extends beyond the back ends of the support rails when the second wheels are rolled up against the back ends of the support rails. The motivation for said construction would be a matter of design choice, depending on the size of the pallet or article to be supported by the cart.

In regard to claims 10 and 11, *inasmuch as the claims are understood in view of the 112 rejections set forth above*, Konstant discloses the pallet rack comprising the limitations of claim 9 as set forth above, but does not disclose the support rails or side

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rails having a length related to the pallet stored. It would have been obvious to one of ordinary skill in the art at the time of the invention to construct both the support rails and the side rails as disclosed by Konstant of any length relative to an object to be stored on said rails. The motivation would be an obvious design choice so as to not waste material or space when constructing said rails.

In regard to claim 13, *inasmuch as the claims are understood in view of the 112 rejections set forth above*, Konstant discloses the pallet rack comprising the limitations of claim 9 as set forth above, but does not disclose the predetermined pallet length between 46 and 50 inches. It would have been obvious to one of ordinary skill in the art at the time of the invention to store an object having a length between 46 and 50 inches on the rack as disclosed by Konstant. It is well known and obvious in the art of pallet storage to store a typical pallet on a pallet rack, wherein said pallet has a common length between 46 and 50 inches.

Claims 3, 4, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over '546 to Konstant as applied to claims 1, 2, 5, 6, 7, 9, and 14-18 above, and further in view of U.S. Patent No. 6,129,223 to Krummell.

Konstant discloses a pallet rack comprising the limitations of claims 1, 2, and 9, but does not disclose said second pair of side rails comprising wheel guides wherein said first wheels of said first cart are rollable along the wheel guides. Krummell discloses a push-back cart system comprising a plurality of carts, wherein a second cart 42 comprises wheel guide flanges 48 adapted to receive the wheels 58 of a first cart 44 (see FIG. 1). It would have been obvious to one of ordinary skill in the art at the time of

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the invention to include the guide flanges as disclosed by Krummell on the carts 32 and 36 of the assembly disclosed by Konstant, so that the front wheels 38 of the cart 36 as disclosed by Konstant are rollable along the guide flanges. The motivation for including the guide flanges on the second cart would be to allow for both carts to be constructed of uniform width, while maintaining their overlapping ability. If the second cart is provided with guide flanges, the rear wheels of the first cart can be disposed on the interior tracks of the support rails 12, and the front wheels of said front cart can be disposed in said guide flanges of second cart. This design would be an obvious improvement to simplify the manufacturing of the carts because only one cart width would be necessary. Further motivation for providing the carts as disclosed by Konstant with guide flanges as disclosed by Krummell would be to allow for the support of more than two cart, and thus, allow for more articles to be supported by the overall assembly.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-19 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

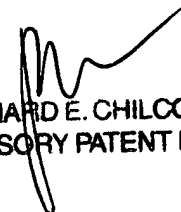
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jared W. Newton whose telephone number is (571) 272-2952. The examiner can normally be reached on M-F 8-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JWN  
November 28, 2005



**RICHARD E. CHILCOT, JR.**  
**SUPERVISORY PATENT EXAMINER**

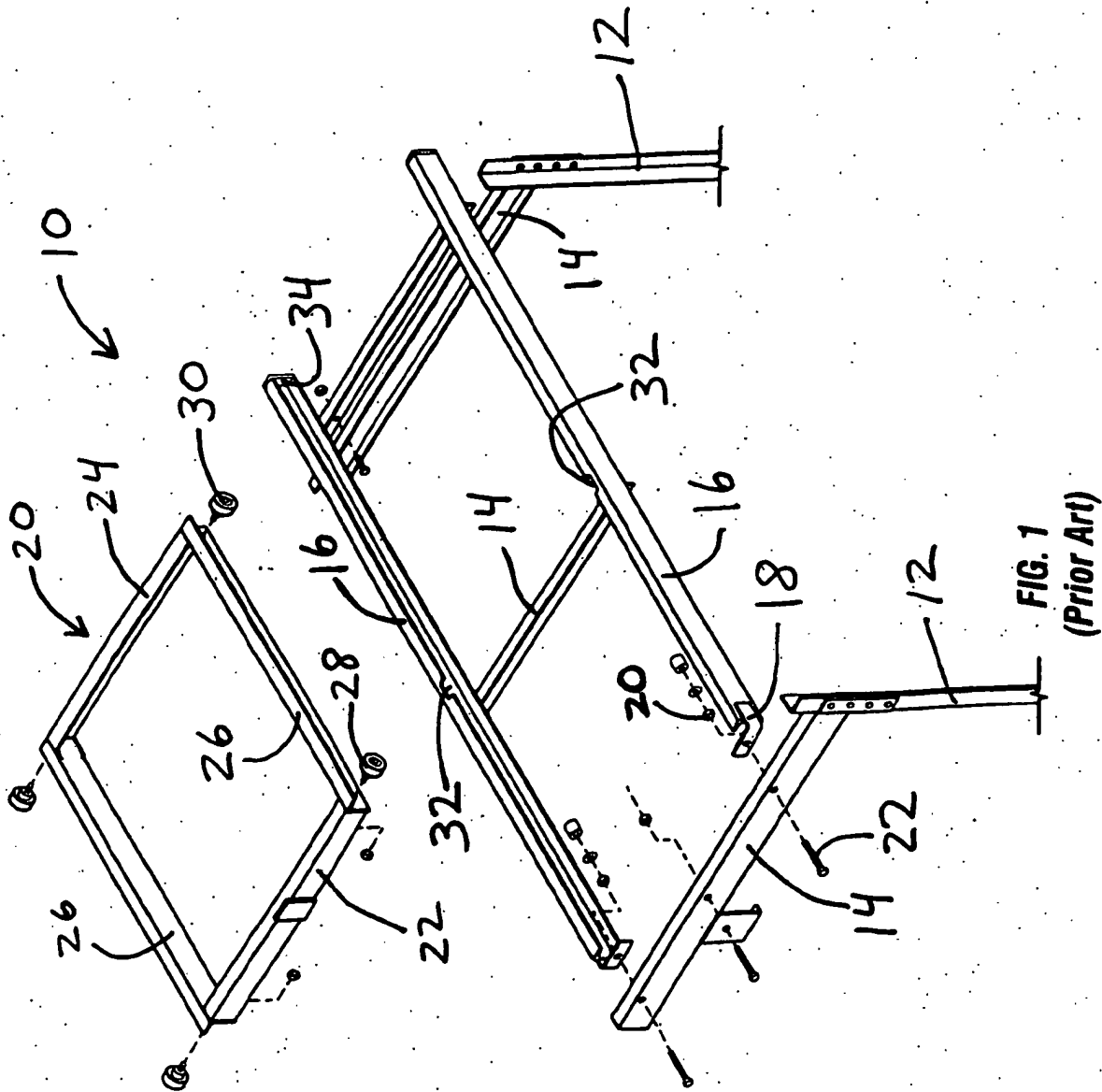


FIG. 1  
(Prior Art)

Proposed Drawing Approval  
11/28/05 *gwn*